

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2206 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DISTRICT PANCHAYAT

Versus

GAUTAMKUMAR CHHAGANLAL MARU

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR DAGLY for MR YOGESH S LAKHANI for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 23/12/98

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Rule. Shri Dagli waives service of Rule on behalf of respondent.

#. This civil revision application is wholly a frivolous litigation filed by District Panchayat, Junagadh, before

this Court and it further exhibits how money which has to be utilized for the purpose of welfare of citizens is being wasted in litigation by none other than a constitutional body - District Panchayat.

#. The plaintiff-respondent filed a suit in the civil Court for giving him appointment in District Panchayat on compassionate grounds. The learned counsel for the petitioner admits that District Panchayat has not rejected his claim. The appointment is to be given by the State Government and matter has been sent to it for its sanction. The State Government, in its turn, has not sanctioned the appointment of the plaintiff-respondent and that action of the State Government gave cause to him to file civil suit in the civil Court. It is also not in dispute that both, the District Panchayat and the State of Gujarat were party to this suit. The suit has been decreed against both District Panchayat and State of Gujarat admittedly. Both the District Panchayat and State of Gujarat had not filed appeal against the decree of the trial Court. So the State of Gujarat has not felt aggrieved of the decree passed by the learned trial Court. The State of Gujarat has also admittedly not raised any objection against the execution of this decree. Moreover, the State of Gujarat has also not been impleaded as a party to this civil revision application. The learned counsel for petitioner admits that the District Panchayat has nothing to do in these appointments. It has no power either to accept or reject this application of a candidate.

#. The learned counsel for District Panchayat, says that District Panchayat in this matter simply acts as a Post Office at the receiving end and sends the application to the State Government for its sanction. whatever the order passed by the State Government in the application of the candidate, it is required to communicate the same to him. In her submissions at delivery end also the District Panchayat acts as a Post Office. On being asked by the Court the learned counsel for the petitioner admits that the District Panchayat has not objected the application of the respondent made for compassionate appointment. So from these facts, it is clear that the District Panchayat as per its case, is only a Post Office and the State of Gujarat is the only competent authority to make such appointment. If it is so, then District Panchayat cannot be said to be an aggrieved or affected person in the matter. It is the State of Gujarat which could have been aggrieved of this decree but it has accepted the same as it has neither filed appeal or any objection in execution. In fact, and admittedly, the

District Panchayat has not contested the suit as what it considered and felt that the power to give appointment on compassionate ground lies with the State of Gujarat. In fact, it has not remained present in the proceedings of the suit in the trial Court.

#. One more important fact is also borne out from the memo of civil revision application. These objections in execution application No.11/1993 have been taken by the petitioner as limitation for filing appeal against the decree has expired. So the whole purpose and object to raise objection in execution is to show that the matter has not gone unchallenged. In these facts, the litigations, both before executing Court and this Court are not only ill-advised and sheer wastage of people's money but is an attempt on the part of the concerned Officers of the District Panchayat to put curtains on their negligence, lapses and mistakes.

#. Objections which have been raised in the execution are not relating to jurisdiction of the civil court to pass decree and the decree passed by the trial Court cannot be said to be a nullity. The objections which are sought to be raised in execution proceedings or this civil revision application should have been raised by District Panchayat in the suit itself which it has not done. When the petitioner has not considered necessary to contest the suit then how these objections could have been raised by it in the execution. In fact and substance, the petitioner by its this conduct, otherwise is estopped from raising the objections in the execution proceedings. It appears that the suit has also not been contested by the State of Gujarat.

#. It is not the case where only this civil revision application has to be dismissed, but I am satisfied that it is a fit case where costs have to be awarded to the plaintiff-respondent of this litigation. The plaintiff-respondent is a person who is without employment and he approached to the civil court for getting appointment on compassionate grounds on the death of his father, who was admittedly an employee of the District Panchayat. The District Panchayat, as per its case has nothing to do in the matter except to act as a post office. So filing of the revision application before this Court by District Panchayat is wholly uncalled for, unjustified and deliberate attempt to drag this poor person in litigation and as such the costs of this litigation has to be awarded to him which is quantified to Rs.5,000/=, as stated by learned counsel for respondent he had charged this amount as his

professional fees to appear in the matter for him.

#. In the result, this civil revision application fails and the same is dismissed. Rule discharged.

(S.K.Keshote, J.)

(sunil)